

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	Case No. 3:17-cv-00197-WHR-SLO
	:	
Plaintiff,	:	
	:	Judge Walter H. Rice
v.	:	
	:	
JEFFERY W. DAVIS, et al.,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANT JPMORGAN CHASE BANK, N.A.**  
**TO PLAINTIFF'S COMPLAINT**

Now comes Defendant JPMorgan Chase Bank, N.A. ("Defendant"), by and through counsel, and for its Answer to the Complaint ("Complaint") of Plaintiff United States of America ("Plaintiff"), hereby admits, denies, and avers as follows:

1. For its response to Paragraphs 1 and 2 of Plaintiff's Complaint, Defendant states that such paragraphs state legal conclusions to which no response is required. To the extent a response is required, Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 1 and 2 of Plaintiff's Complaint and therefore denies such allegations.

2. For its response to Paragraph 3 of Plaintiff's Complaint, Defendant admits that Plaintiff is the United States of America.

3. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 4 through 7 of Plaintiff's Complaint and therefore denies such allegations.

4. For its response to Paragraph 8 of Plaintiff's Complaint, Defendant admits that it claims an interest in one of the properties at issue in this lawsuit. Defendant is without information sufficient to form a belief as to the truth or falsity of any remaining allegations contained in Paragraph 8 of Plaintiff's Complaint and therefore denies such allegations.

5. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 9 through 16 of Plaintiff's Complaint and therefore denies such allegations.

6. For its response to Paragraph 17 of Plaintiff's Complaint, Defendant states that, on or about February 9, 2007, Defendants Laura K. Davis and Jeffrey W. Davis (collectively, "Borrowers") executed a Home Equity Line of Credit Agreement and Disclosure Statement (the "Note") in favor of Defendant. Defendant further states that Borrowers also executed an Open-End Mortgage (the "Mortgage") in favor of Defendant granting a mortgage lien as to the real property located at 2936 Stone Mill Court, Beavercreek, Ohio 45434 (the "Subject Property") and that such Mortgage was recorded with the Greene County Recorder on or about March 9, 2007. Defendant further states that true and accurate copies of the Note and Mortgage are attached hereto respectively as Exhibits A and B and that such documents speak for themselves. Defendant denies any remaining allegations contained in Paragraph 17 of Plaintiff's Complaint.

7. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 18 through 64 of Plaintiff's Complaint and therefore denies such allegations.

8. For its response to Paragraph 65 of Plaintiff's Complaint, Defendant incorporates the preceding paragraphs of this Answer.

9. Defendant is without information sufficient to form a belief as to the truth or

falsity of the allegations contained in Paragraph 66 of Plaintiff's Complaint and therefore denies such allegations.

10. For its response to Paragraph 67 of Plaintiff's Complaint, Defendant incorporates the preceding paragraphs of this Answer.

11. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 68 of Plaintiff's Complaint and therefore denies such allegations.

12. For its response to Paragraph 69 of Plaintiff's Complaint, Defendant incorporates the preceding paragraphs of this Answer.

13. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 70 of Plaintiff's Complaint and therefore denies such allegations.

14. For its response to Paragraph 71 of Plaintiff's Complaint, Defendant incorporates the preceding paragraphs of this Answer.

15. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 72 through 86 of Plaintiff's Complaint and therefore denies such allegations.

16. Defendant hereby denies all allegations contained in Plaintiff's Complaint not expressly admitted herein.

#### **FIRST AFFIRMATIVE DEFENSE**

17. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

**RESERVATION OF DEFENSES**

Defendant expressly reserves the right to assert any additional defenses against Plaintiff's claims, which are shown to exist by reason of discovery and/or other proceedings in this case.

WHEREFORE, having fully answered the allegations in Plaintiff's Complaint, Defendant respectfully requests that the Court dismiss Plaintiff's Complaint and grant Defendant all other appropriate relief in this matter. Defendant further requests that, in the event of a sale of the Subject Property, this Court declare: (i) that Defendant has valid lien upon the Subject Property; (ii) that Defendant's rights and interests in the Subject Property shall be protected and secured; and (iii) that the proceeds of said sale be applied to the outstanding balance due to Defendant.

Respectfully submitted,

/s/ Nelson M. Reid

Nelson M. Reid (0068434)

Bricker & Eckler LLP

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Columbus, Ohio 43215-4291

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Trial Attorney for Defendant

JPMorgan Chase Bank, N.A.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of November, 2017, a copy of the foregoing ANSWER OF DEFENDANT JPMORGAN CHASE BANK, N.A. TO PLAINTIFF'S COMPLAINT was filed electronically through the Court's Electronic Filing System. Notice of this filing will be sent to all registered parties by operation of the Court's Electronic Filing System.

/s/ Nelson M. Reid  
Nelson M. Reid

# HOME EQUITY LINE OF CREDIT<sup>sm</sup> AGREEMENT AND DISCLOSURE STATEMENT

Principal	Loan Date	Maturity	Loan No.	Cell / Coll	Account	Officer	Initials
\$220,000.00	02-09-2007	02-09-2037					

References in the shaded area are for our use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing \*\*\*\*\* has been omitted due to text length limitations.

**Borrower:** JEFFREY W DAVIS and LAURA K DAVIS  
2936 STONE MILL CT  
DAYTON, OH 45434-6279

**Lender:** JPMorgan Chase Bank, N.A.  
Home Equity and Consumer Lending Division  
1111 Polaris Parkway  
Columbus, OH 43240

**CREDIT LIMIT: \$220,000.00**

**DATE OF AGREEMENT: February 9, 2007**

**Introduction.** This HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT ("Agreement") governs your line of credit (the "Credit Line" or the "Credit Line Account") issued through JPMorgan Chase Bank, N.A.. In this Agreement, the words "Borrower," "you," "your," and "Applicant" mean each and every person who signs this Agreement, including all Borrowers named above. The words "we," "us," "our," and "Lender" mean JPMorgan Chase Bank, N.A.. You agree to the following terms and conditions:

**Promise to Pay.** You promise to pay JPMorgan Chase Bank, N.A., or order, the total of all credit advances and FINANCE CHARGES, together with all costs and expenses for which you are responsible under this Agreement or under the "Mortgage" which secures your Credit Line. You will pay your Credit Line according to the payment terms set forth below. If there is more than one Borrower, each is jointly and severally liable on this Agreement. This means we can require any Borrower to pay all amounts due under this Agreement, including credit advances made to any Borrower. Each Borrower authorizes any other Borrower, on his or her signature alone, to cancel the Credit Line, to request and receive credit advances, and to do all other things necessary to carry out the terms of this Agreement. We can release any Borrower from responsibility under this Agreement, and the others will remain responsible.

**Term.** The term of your Credit Line will begin as of the date of this Agreement ("Opening Date") and will continue until February 9, 2037 ("Maturity Date"). All indebtedness under this Agreement, if not already paid pursuant to the payment provisions below, will be due and payable upon maturity. The draw period of your Credit Line will begin on a date, after the Opening Date, when the Agreement is accepted by us in the State of Ohio, following the expiration of the right to cancel, the perfection of the Mortgage, the receipt of all required certificates of noncancellation, and the meeting of all of our other conditions and will continue as follows: ten (10) years. The Draw Period is also referred to as the "First Payment Stream". You may obtain credit advances during this period ("Draw Period"). After the Draw Period ends, the repayment period will begin and you will no longer be able to obtain credit advances. The length of the repayment period is as follows: twenty (20) years. The Repayment Period is also referred to as the "Second Payment Stream". You agree that we may renew or extend the period during which you may obtain credit advances or make payments. You further agree that we may renew or extend your Credit Line Account.

**Minimum Payment.** During the Draw Period your Regular Payment will be equal to the amount of the FINANCE CHARGE accrued for the billing cycle for which the statement is rendered. You will make 120 of these payments. Your payments will be due Monthly. Advances to your credit line or an increase in the ANNUAL PERCENTAGE RATE may increase your Regular Payment. If you make only the Regular Payment during your Draw Period, the principal balance outstanding on your line will not be reduced as a consequence of your payment of only the FINANCE CHARGE due.

During the Repayment Period, your minimum monthly payments will be (a) the unpaid principal balance divided by the remaining number of scheduled payments, plus (b) the amount of finance charge accrued plus any fees and any amounts past due. You will make monthly payments as noted below during the Repayment Period.

Range of Balances	Number of Payments	Amortization Period
All Balances	240	240 payments

Your "Minimum Payment" will be the Regular Payment, plus any amounts past due and all other charges. In addition, we have the right to require you to pay fees and charges assessed on the Credit Line Account with and in addition to the Minimum Payment. You agree to pay not less than the Minimum Payment on or before the due date indicated on your periodic billing statement. If your credit line balance falls below \$100.00 during the Repayment Period, you agree to pay your balance in full.

**How Your Payments Are Applied.** Unless otherwise agreed or required by applicable law, payments and other credits will be applied to principal, interest, fees and other charges in any order. Except for any balances subject to the Conversion Options provisions of this Agreement, if your Credit Line Account has principal balances outstanding at different rates, we may apply principal payments first to outstanding balances at the lowest applicable rate before applying principal payments to balances accruing interest at a higher rate. We may apply all payments and credits in accordance with our standard operating procedures and with the requirements of applicable law. Notwithstanding anything to the contrary in this Agreement, we may apply our standard operating procedures to verify that we have received good funds after we received your payments before releasing the payment amounts as available credit on your Credit Line Account.

**Receipt of Payments.** All payments must be made by a check, automatic account debit, electronic funds transfer, money order, or other instrument in U.S. dollars and must be received by us at the remittance address shown on your periodic billing statement. Payments received at that address prior to close of business on any business day will be credited to your Credit Line as of the date received. If we receive payments at other locations, such payments will be credited promptly to your Credit Line, but crediting may be delayed for up to five (5) days after receipt.

**Credit Limit.** This Agreement covers a revolving line of credit for the principal amount of Two Hundred Twenty Thousand & 00/100 Dollars (\$220,000.00), which will be your "Credit Limit" under this Agreement. During the Draw Period we will honor your request for credit advances subject to the section below on Lender's Rights. You may borrow against the Credit Line, repay any portion of the amount borrowed, and re-borrow up to the amount of the Credit Limit. Your Credit Limit is the maximum amount you may have outstanding at any one time. You agree not to attempt, request, or obtain a credit advance that will make your Credit Line Account balance exceed your Credit Limit. Your Credit Limit will not be increased should you overdraw your Credit Line Account. If you exceed your Credit Limit, you agree to repay immediately the amount by which your Credit Line Account exceeds your Credit Limit, even if we have not yet billed you. Any credit advances in excess of your Credit Limit will not be secured by the Mortgage covering your principal dwelling.

**Charges to your Credit Line.** We may charge your Credit Line to pay other fees and costs that you are obligated to pay under this Agreement, the Mortgage or any other document related to your Credit Line. In addition, we may charge your Credit Line for funds required for continuing insurance coverage as described in the paragraph titled "Insurance" below or as described in the Mortgage for this transaction. We may also, at our option, charge your Credit Line to pay any costs or expenses to protect or perfect our security interest in your principal dwelling. These costs or expenses include, without limitation, payments to cure defaults under any existing liens on your principal dwelling. If you do not pay your property taxes, we may charge your Credit Line and pay the delinquent taxes. Any amount so charged to your Credit Line will be a credit advance and will decrease the funds available, if any, under the Credit Line. However, we have no obligation to provide any of the credit advances referred to in this paragraph.

**Credit Advances.** After the Effective Disbursement Date of this Agreement, you may obtain credit advances under your Credit Line as follows:

**Credit Line Checks.** Writing a preprinted "credit line check" that we will supply to you.

**Requests in Person.** Requesting a credit advance in person at any of our authorized locations.

**Credit Card Access.** Using your "credit card" to receive cash advances or to make purchases.

**ATM Access.** Using your "credit card/ATM card" at any of our designated ATM locations.

If there is more than one person authorized to use this Credit Line Account, you agree not to give us conflicting instructions, such as one of you telling us not to give advances to the other.

**Limitations on the Use of Checks.** We reserve the right not to honor credit line checks in the following circumstances:

**Credit Limit Violation.** Your Credit Limit has been or would be exceeded by paying the credit line check.

**Post-dated Checks.** Your credit line check is post-dated. If a post-dated credit line check is paid and as a result any other check is returned or not paid, we are not responsible for any losses or damages you incur.

**Stolen Checks.** Your credit line checks have been reported lost or stolen.

EXHIBIT

Labels

# HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT (Continued)

Loan No: [REDACTED]

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**Unauthorized Signatures.** Your credit line check is not signed by an "Authorized Signer" as defined below.

**Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we paid the credit line check.

If we pay any credit line check under these conditions, you must repay us, subject to applicable laws, for the amount of the credit line check. The credit line check itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of a check is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. We may choose not to return credit line checks along with your periodic billing statements; however, your use of each credit line check will be reflected on your periodic statement as a credit advance. We do not "certify" credit line checks drawn on your Credit Line.

**Limitations on the Use of Credit Cards.** We reserve the right not to honor credit cards in the following circumstances:

**Credit Limit Violation.** Your Credit Limit has been or would be exceeded by paying the credit card charge.

**Stolen Credit Cards.** Your credit cards have been reported lost or stolen.

**Unauthorized Signatures.** Your credit card is not used by an "Authorized Signer" as defined below.

**Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we paid the Credit Line charge.

If we pay any advance requested by use of the credit card under these conditions, you must repay us, subject to applicable laws, for the amount of the advance. The advance itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of an advance is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. Your use of the credit card will be reflected on your periodic statement as a credit advance.

**Limitations on the Use of ATM Cards.** We reserve the right not to honor credit card/ATM cards in the following circumstances:

**Credit Limit Violation.** Your Credit Limit has been or would be exceeded by honoring the credit card/ATM card charge.

**Stolen ATM Cards.** Your credit card/ATM cards have been reported lost or stolen.

**Unauthorized Signatures.** Your credit card/ATM card is not used by an "Authorized Signer" as defined below.

**Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we honored the Credit Line charge.

If we pay any advance requested by use of the credit card/ATM card under these conditions, you must repay us, subject to applicable laws, for the amount of the advance. The advance itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of an advance is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. Your use of the credit card/ATM card will be reflected on your periodic statement as a credit advance.

**Transaction Requirements.** The following transaction limitations will apply to the use of your Credit Line:

**ATM Access Limitations.** The following transaction limitations will apply to your Credit Line and using an Automated Transaction Machine ("ATM") access card.

**Other Transaction Requirements.** Transactions conducted at ATMs are governed by the limitations of the individual ATM owners and may be subject to ATM fees and transaction limitations imposed by the ATM owner.

**Credit Card Limitations.** The following transaction limitations will apply to your Credit Line and using a Credit Card.

**Other Transaction Requirements.**

You agree not to use your credit card to initiate a transaction involving Internet gambling, regardless of the jurisdiction in which you are located, including locations within the United States, and the Bank has the right to refuse a transaction which it reasonably believes involves Internet gambling.

The maximum limit of each transaction per day may not exceed your current available balance or \$99,999.99, whichever is less. For security reasons, there may be times when we further limit this amount, request authentication by the merchant or bank of your identity or decline the transaction even if you have the available funds.

**Credit Line credit line check and In Person Request Limitations.** There are no transaction limitations for the writing of credit line checks or requesting an advance in person.

**Authorized Signers.** The words "Authorized Signer" for credit line checks, credit cards and credit card/ATM cards as used in this Agreement mean and include each person who signs this agreement.

**Lost credit line checks, credit cards and credit card/ATM cards.** If you lose your credit line checks, credit cards or credit card/ATM cards or if someone is using them without your permission, you agree to let us know immediately. The fastest way to notify us is by calling us at (800) 800-5626.

**Liability For Unauthorized Use.** You may be liable for the unauthorized use of your credit card access device which accesses your Credit Line. You will not be liable for unauthorized use that occurs after you notify us or our designee at JPMorgan Chase Bank, N.A., P.O. Box 901008, Fort Worth, TX 76101-2008, orally or in writing, of the loss, theft, or possible unauthorized use. In any case, your liability for unauthorized use of your credit card will not exceed \$50.00.

If you use an access card which debits a checking account (or other consumer asset account) but also draws on an overdraft line of credit, Regulation E provisions apply, as well as sections 226.13(d) and (g) of Regulation Z. In such a transaction, you might be liable for up to \$50.00 under Regulation Z. Also, you might be liable for \$50.00, \$500.00, or an unlimited amount under Regulation E, or a lesser amount under applicable state law. Please refer to your electronic fund transfers disclosure for liability limitations and error-resolution procedures for transactions covered by the federal Electronic Fund Transfers Act.

**Future Credit Line Services.** Your application for this Credit Line also serves as a request to receive any new services (such as access devices) which may be available at some future time as one of our services in connection with this Credit Line. You understand that this request is voluntary and that you may refuse any of these new services at the time they are offered. You further understand that the terms and conditions of this Agreement will govern any transactions made pursuant to any of these new services.

**Collateral.** You acknowledge this Agreement is secured by an Open-End Mortgage dated February 9, 2007, to us on real property located in GREENE County, State of Ohio, all the terms and conditions of which are hereby incorporated and made a part of this Agreement.

**Insurance.** You must obtain insurance on the Property securing this Agreement that is reasonably satisfactory to us. You may obtain property insurance through any company of your choice that is reasonably satisfactory to us. You have the option of providing any insurance required under this Agreement through an existing policy or a policy independently obtained and paid for by you, subject to our right, for reasonable cause before credit is extended, to decline any insurance provided by you. Subject to applicable law, if you fail to obtain or maintain insurance as required in the Mortgage, we may purchase insurance to protect our own interest, add the premium to your balance, pursue any other remedies available to us, or do any one or more of these things.

**Periodic Statements.** If you have a balance owing on your Credit Line Account or have any account activity, we will send you a periodic statement. It will show, among other things, credit advances, FINANCE CHARGES, other charges, payments made, other credits, your "Previous Balance," and your "New Balance." Your statement also will identify the Minimum Payment you must make for that billing period and the date it is due.

**When FINANCE CHARGES Begin to Accrue.** Periodic FINANCE CHARGES for credit advances under your Credit Line will begin to accrue on the date credit advances are posted to your Credit Line. There is no "free ride period" which would allow you to avoid a FINANCE CHARGE on your Credit Line credit advances.

**Method Used to Determine the Balance on Which the FINANCE CHARGE Will Be Computed.** A daily FINANCE CHARGE will be imposed on all credit advances made under your Credit Line imposed from the date of each credit advance based on the "daily balance" method. To get the daily balance, we take the beginning balance of your Credit Line Account each day, add any new advances and subtract any payments or credits and any unpaid FINANCE CHARGES. This gives us the "daily balance."

**Method of Determining the Amount of FINANCE CHARGE.** Any FINANCE CHARGE is determined by applying the "Periodic Rate" to the balance described herein. Then we add together the periodic FINANCE CHARGES for each day in the billing cycle. This is your FINANCE CHARGE calculated by applying a Periodic Rate.

**Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE.** We will determine the Periodic Rate and the corresponding ANNUAL



# HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT

Loan No. [REDACTED]

(Continued)

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**PERCENTAGE RATE** as follows. We start with an independent index which is the Prime Rate. Prime Rate means the base rate on corporate loans posted by at least 75% of the USA's largest banks known as The Wall Street Journal Prime Rate and published in The Wall Street Journal (or alternate publication if required) on each publication day of each month. If more than one rate is published as the prime rate, the Prime Rate will be the highest rate called "the Prime Rate" (the "Index"). We will use the most recent index value available to us as of the date of any **ANNUAL PERCENTAGE RATE** adjustment. The Index is not necessarily the lowest rate charged by us on our loans. If the Index becomes unavailable during the term of this Agreement, we may designate a substitute index after notice to you. To determine the Periodic Rate that will apply to your First Payment Stream, we subtract a margin from the value of the Index, then divide the value by the number of days in a year (daily). To obtain the **ANNUAL PERCENTAGE RATE** we multiply the Periodic Rate by the number of days in a year (daily). This result is the **ANNUAL PERCENTAGE RATE** for your First Payment Stream. To determine the Periodic Rate that will apply to your Second Payment Stream, we subtract a margin from the value of the Index, then divide the value by the number of days in a year (daily). To obtain the **ANNUAL PERCENTAGE RATE** we multiply the Periodic Rate by the number of days in a year (daily). This result is the **ANNUAL PERCENTAGE RATE** for your Second Payment Stream. The **ANNUAL PERCENTAGE RATE** includes only interest and no other costs.

The Periodic Rate and the corresponding **ANNUAL PERCENTAGE RATE** on your Credit Line will increase or decrease as the Index increases or decreases from time to time. Any increase in the Periodic Rate during the Second Payment Stream will take the form of a higher Minimum Payment amount. Adjustments to the Periodic Rate and the corresponding **ANNUAL PERCENTAGE RATE** resulting from changes in the Index will take effect on the first calendar day following the publication of a new Prime Rate. In no event will the corresponding **ANNUAL PERCENTAGE RATE** be more than the greater of 21.00000% or the maximum rate we would be allowed to charge or collect by federal law or the law of the State of Ohio (as applicable). On the day we prepared this document, the Index was 8.250% per annum, and therefore the Initial Periodic Rate and the corresponding **ANNUAL PERCENTAGE RATE** on your Credit Line are estimated below. Your Initial Periodic Rate and corresponding **ANNUAL PERCENTAGE RATE** will be based on the Index in effect on your closing date.

Current Rates for the First Payment Stream			
Range of Balance or Conditions	Margin Added to Index	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
All Balances	-0.760 %	7.490 %	0.02052 %

  

Current Rates for the Second Payment Stream			
Range of Balance or Conditions	Margin Added to Index	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
All Balances	-0.760 %	7.490 %	0.02052 %

Notwithstanding any other provision of this Agreement, we will not charge interest on any undisbursed loan proceeds, except as may be permitted during any Right of Rescission period. No matter what else may be stated in any other provision of this Agreement or in any other document you may have with us, you do not agree or intend to pay, and we do not agree or intend to charge any interest or fee for the HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT which would in any way cause us to contract for, charge or collect more for the Credit Line Account than the maximum we would be permitted to charge or collect by any applicable federal or Ohio state law. Any such excess interest or unauthorized fee will be applied first to reduce the unpaid principal balance of the Credit Line Account, and when the principal has been paid in full, be refunded to you.

**Conversion Options.** This Agreement contains an option to convert the interest rate from a variable rate with interest rate limits to a fixed rate as calculated below. The following information is representative of conversion features recently offered by us.

**ANNUAL PERCENTAGE RATE Increase.** Your **ANNUAL PERCENTAGE RATE** may increase if you exercise this option to convert to a fixed rate.

**Conversion Periods.** With our written consent, any one of you can exercise the option to convert to a fixed rate (a "Lock") for either the entire outstanding balance on the Credit Line Account or any portion thereof (but not less than \$1,000.00). Any Locks you take immediately at closing cannot exceed 95% of your Credit Limit.

**Fully Amortizing Lock Option.** At any time during the Draw Period, you can choose a Lock that will fully amortize in substantially equal monthly installments for a term of up to the lesser of 30 years or the remaining originally scheduled term of your Credit Line account.

**Reduced Payment Lock Options.** During the Draw Period, you can choose a 3, 5 or 7 year Lock term with a reduced payment requirement. At the end of the 3, 5, or 7 year period selected, your Lock will mature. However, you cannot choose a Reduced Payment Lock option that will mature later than 1 full month before the originally scheduled end of your Draw Period. At the time you select your Reduced Payment Lock option, you must choose from the following payment options on the Lock:

- (1) Pay the amount of interest that accrues on that Lock for the billing cycle for which the statement is rendered.
- (2) Pay the greater of the amount of interest that accrues on that Lock for the billing cycle for which the statement is rendered, or 1% of the outstanding balance on your Lock, but if the balance on your Lock falls below \$100.00, you will pay your Lock balance in full.
- (3) Pay the amount that would be required to fully repay the Lock over a 360 month term in substantially equal installments.

**Maturity Options for Reduced Payment Locks.** If you select a Reduced Payment Lock Option, at the maturity of such a Lock you will have the following options:

- (1) If you are still within the Draw Period, you can re-Lock the remaining Lock balance using the Fully Amortizing Lock option described above.
- (2) If you are still within the Draw Period, you can re-Lock the remaining Lock balance using the Reduced Payment Lock options described above. However, you cannot choose a Reduced Payment Lock option that will mature later than 1 full month before the originally scheduled end of your Draw Period.
- (3) You can roll the remaining balance of your Lock into your Credit Line at the standard Credit Line terms under this Agreement. If you make no election, we will select this option for you.

**General Lock Provisions.** You may have up to 5 Locks outstanding at any one time but may not make additional advances to any one Lock once established. The total outstanding balance on any Lock will not be subject to the "Credit Advances" and "Minimum Payment" section of this Agreement. Your Minimum Payment due each month will be the sum of the payment amount for each Lock plus the minimum payment amount for the balance of your Account which has not been designated as a Lock (the "Credit Line"), calculated using the formula set forth in the "Minimum Payment" section of this Agreement. Additional payments in any Lock may be made at any time but shall not affect your obligation to pay succeeding Lock payments as long as any amount is still owing on the Lock. Any payment made upon your outstanding principal balance in any Lock will be available on the Credit Line for you to draw against upon posting of such payment prior to the maturity date. If your outstanding balance includes one or more Locks as well as a balance on your Credit Line, unless you properly designate otherwise on a payment coupon we provide you, then each additional payment we receive will be first applied to the Credit Line until paid in full. Also, unless you properly designate otherwise on a payment coupon we provide you, if there is no Credit Line to which to apply an additional principal payment, then the additional principal payment will be applied to the Lock first opened until paid in full. Additional Lock payments will not affect your obligation to pay succeeding Lock payments as long as any amount is still owing on the Lock unless we otherwise agree in writing.

Upon conversion, the converted outstanding balance will accrue interest at a fixed rate as calculated in the Rate Determination section and as otherwise provided in this Agreement.

**Conversion Fees.** You will be required to pay the following fees at the time of conversion to a fixed rate: We may charge you \$0.00 for each Lock that we set up at your request.

**Cancellation of Lock.** If you later request that we cancel a Lock, we may permit you to do so if you agree to pay the Lock cancellation fee that is in effect at the time of cancellation for each Lock you cancel. You will be required to sign an amendment to this Agreement which will contain the amount of the agreed upon cancellation fee.

**Rate Determination.** The fixed rate will be determined as follows: We will start with the "Lock Index," which is the yield on U.S. Treasury securities having a comparable period of maturity to the scheduled maturity of the requested Lock as of the 15th day of the month immediately preceding the month in which you request your Lock. If the Lock Index becomes unavailable during the term of this



# HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT (Continued)

Loan No: [REDACTED]

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Agreement, we may designate a substitute index after notice to you. We will then add 10 percentage points to the Lock Index. Your fixed lock rate (the "Fixed Lock Rate") will be the lowest of the following: the amount arrived at from the foregoing calculation, 21%, or the maximum rate we are allowed to charge you at the time of your lock under federal law, which for the purposes of 12 U.S.C. Section 85 incorporates Ohio law. We will then review the rates and terms available for a comparable Home Equity Loan offered by us at the time of your request based upon a like loan to value ratio, loan term and your credit profile. In the case of a Reduced Payment Lock Option, we will also consider the rate we might offer for a loan of a similar term. If, after that review we determine that we can offer you a lower rate than the Fixed Lock Rate, we will give you the lower rate. We will provide a complete disclosure of the terms of the Lock at the time the Lock is established.

**Conditions Under Which Other Charges May Be Imposed.** You agree to pay all the other fees and charges related to your Credit Line as set forth below:

**Annual Fee.** The Annual Fee for the first year is waived. Thereafter, a nonrefundable Annual Fee of \$50.00 will be charged to your Credit Line beginning on your first anniversary date and will continue annually throughout the Draw Period.

**Payment of Closing Costs.** If you elect to charge your Credit Line Account to pay the closing costs associated with your Credit Line (such as title insurance premiums, appraisal fees, credit report fees, and recording fees), the total of these charges will be reflected as "closing costs" on your first periodic billing statement.

**Returned Items.** You may be charged \$25.00 if you pay your Credit Line obligations with a check, draft, or other item that is dishonored for any reason.

**Fee to Stop Payment.** Your Credit Line Account may be charged \$15.00 when you request a stop payment on your account.

**Overlimit Charge.** Your Credit Line Account may be charged \$25.00 for each credit advance in excess of your Credit Limit. This includes writing a credit line check in excess of your available balance.

**Late Charges.** Your payment will be late if it is not received by us within 10 days of the "Payment Due Date" shown on your periodic statement. If your payment is late we may charge you \$25.00.

**Fee to Close Account.** If you close or terminate your Credit Line Account, you may be charged the following: Your Credit Line Account may be charged the lesser of 1% of your Credit Line or \$400.00 if you close or terminate your Credit Line Account within three (3) years from the Loan Date shown above. You will not be charged this fee if we suspend or terminate your Credit Line Account. You may prepay your Credit Line Account without paying this fee as long as you do not close or terminate your Credit Line Account.

**Lien Release Fees.** In addition to all other charges, you agree, to the extent not prohibited by law, to pay all governmental fees for release of our security interests in collateral securing your Credit Line. You will pay these fees at the time the lien or liens are released. The estimated amount of these future lien release fees is \$28.00.

**Other Charges.** Your Credit Line Account may be charged the following other charges:

**Account Return Check Charge.** We may charge you a fee for the return of a check because you are delinquent or in default in any respect concerning the Credit Line Account. The amount of this other charge is: 25.00.

The charges listed in the following Security Interest Charges paragraph (if such paragraph is present) are part of the closing or settlement costs associated with your Credit Line.

**Lender's Rights.** Under this Agreement, we have the following rights:

**Termination and Acceleration.** We can terminate your Credit Line Account and subject to any notice requirement or other limitation of applicable law require you to pay us the entire outstanding balance in one payment, and charge you certain fees, if any of the following happen:

(1) You commit fraud or make a material misrepresentation at any time in connection with this Credit Agreement. This can include, for example, a false statement about your income, assets, liabilities, or any other aspects of your financial condition.

(2) You do not meet the repayment terms of this Credit Agreement.

(3) Your action or inaction adversely affects the collateral for the loan or our rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a senior lien on the dwelling without our permission, foreclosure by the holder of another lien, or the use of funds or the dwelling for prohibited purposes.

**Suspension or Reduction.** In addition to any other rights we may have, we can suspend additional extensions of credit or reduce your Credit Limit during any period in which any of the following are in effect:

(1) The value of your property declines significantly below the property's appraised value for purposes of this Credit Line Account. This includes, for example, a decline such that the initial difference between the Credit Limit and the available equity is reduced by fifty percent and may include a smaller decline depending on the individual circumstances.

(2) We reasonably believe that you will be unable to fulfill your payment obligations under your Credit Line Account due to a material change in your financial circumstances.

(3) You are in default under any material obligations of this Credit Line Account. We consider all of your obligations to be material. Categories of material obligations include the events described above under Termination and Acceleration, obligations to pay fees and charges, obligations and limitations on the receipt of credit advances, obligations concerning maintenance or use of the property or proceeds, obligations to pay and perform the terms of any other deed of trust, mortgage or lease of the property, obligations to notify us and to provide documents or information to us (such as updated financial information), obligations to comply with applicable laws (such as zoning restrictions), and obligations of any comaker. No default will occur until we mail or deliver a notice of default to you, so you can restore your right to credit advances.

(4) We are precluded by government action from imposing the ANNUAL PERCENTAGE RATE provided for under this Agreement.

(5) The priority of our security interest is adversely affected by government action to the extent that the value of the security interest is less than one hundred twenty percent (120%) of the Credit Limit.

(6) We have been notified by governmental authority that continued advances may constitute an unsafe and unsound business practice.

**Change in Terms.** We may make changes to the terms of this Agreement if you agree to the change in writing at that time. If the change will unequivocally benefit you throughout the remainder of your Credit Line Account, or if the change is insignificant (such as changes relating to our data processing systems). If the Index is no longer available, we will choose a new Index and margin. The new Index will have an historical movement substantially similar to the original Index, and the new Index and margin will result in an ANNUAL PERCENTAGE RATE that is substantially similar to the rate in effect at the time the original index becomes unavailable. We may prohibit additional extensions of credit or reduce your Credit Limit during any period in which the maximum ANNUAL PERCENTAGE RATE under your Credit Line Account is reached.

**Expenses.** To the extent not prohibited by applicable law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights, shall become a part of the loan payable on demand, and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's expenses for bankruptcy proceedings (including efforts to modify or vacate the automatic stay or injunction) and appeals, to the extent permitted by applicable law.

**Access Devices.** If your Credit Line is suspended or terminated, you must immediately return to us all credit line checks and any other access devices. Any use of credit line checks or other access devices following suspension or termination may be considered fraudulent. You will also remain liable for any further use of credit line checks or other Credit Line access devices not returned to us.

**Delay in Enforcement.** We may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right. If we delay or waive any of our rights, we may enforce that right at any time in the future without advance notice. For example, not terminating your account for non-payment will not be a waiver of our right to terminate your account in the future if you have not paid.

**Cancellation by you.** If you cancel your right to credit advances under this Agreement, you must notify us and return all credit line checks and any other access devices to us. Despite cancellation, your obligations under this Agreement will remain in full force and effect until you have paid us all amounts due under this Agreement.

**Prepayment.** You may prepay all or any amount owing under this Credit Line at any time without penalty, except we will be entitled to receive all accrued FINANCE CHARGES, and other charges, if any. Payments in excess of your Minimum Payment will not relieve you of your obligation

# HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT

Loan No: [REDACTED]

(Continued)

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to continue to make your Minimum Payments. Instead, they will reduce the principal balance owed on the Credit Line. You agree not to send us payments marked "paid in full", "without recourse", or similar language. If you send such a payment, we may accept it without losing any of our rights under this Agreement, and you will remain obligated to pay any further amount owed to us. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: JPMorgan Chase Bank, N.A., P.O. Box 901008 Fort Worth, TX 76101-2008.

**Notices.** All notices will be sent to your address as shown in this Agreement. Notices will be mailed to you at a different address if you give us written notice of a different address. You agree to advise us promptly if you change your mailing address.

**Credit Information and Related Matters.** You authorize us to release information about you to third parties as described in our privacy policy and our Fair Credit Reporting Act notice, provided you did not opt out of the applicable policy, or as permitted by law. You agree that, upon our request, you will provide us with a current financial statement, a new credit application, or both, on forms provided by us. You also agree we may obtain credit reports on you at any time, at our sole option and expense, for any reason, including but not limited to determining whether there has been an adverse change in your financial condition. We may require a new appraisal of the Property which secures your Credit Line at any time, including an internal inspection, at our sole option and expense.

**Transfer or Assignment.** Without prior notice or approval from you, we reserve the right to sell or transfer your Credit Line Account and our rights and obligations under this Agreement to another lender, entity, or person, and to assign our rights under the Mortgage. Your rights under this Agreement belong to you only and may not be transferred or assigned. Your obligations, however, are binding on your heirs and legal representatives. Upon any such sale or transfer, we will have no further obligation to provide you with credit advances or to perform any other obligation under this Agreement.

**Tax Consequences.** You understand that neither we, nor any of our employees or agents, make any representation or warranty whatsoever concerning the tax consequences of your establishing and using your Credit Line, including the deductibility of interest, and that neither we nor our employees or agents will be liable in the event interest on your Credit Line is not deductible. You should consult your own tax advisor for guidance on this subject.

**Notify Us of Inaccurate Information We Report to Consumer Reporting Agencies.** Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: JPMorgan Chase Bank, N.A. P.O. Box 901008 Fort Worth, TX 76101-2008

**Periodic Review.** We will conduct a periodic review of your Credit Line Account, based on credit and financial information we may obtain or receive from you from time to time.

**Collection Costs.** If you are in default under the terms of this Agreement, we may take all lawful action under applicable law to collect the money you owe us. It is our intent to collect only those attorney's fees and those expenses, court and collection costs permitted by the laws of your state and the United States (including the bankruptcy laws of the United States). You agree to pay only those collection costs and attorney's fees that we actually incur and that we may lawfully collect from you. If the laws of your state will not let us collect all or some of these collection costs and attorney's fees from you, we will not do so. To the extent the laws of your state prohibit us from contracting with you to collect such fees or costs or prohibit us from including this provision in your agreement with us, this provision is severed from this Agreement, is of no force and effect and your contract will be read and interpreted without this provision except to the extent federal law may now or hereafter preempt the law of your state.

**CREDIT CARD ACCESS.** Notwithstanding anything contained in this Agreement to the contrary, credit card access may not be available in your state. If credit card access is permitted in your state and becomes available, we will so advise you and will issue a credit card to you upon your request. Any credit card issued in connection with the Home Equity Line of Credit account is NOT a debit card. The words "credit card" as used in this Agreement mean the VISA or MasterCard that may be issued to you as an access device to your Credit Line Account. VISA is a registered service mark of Visa, U.S.A., Inc. MasterCard is a registered service mark of MasterCard International Incorporated.

**FOREIGN TRANSACTIONS.** Lender will charge, and Borrower will pay, in U.S. dollars for all foreign transactions at the exchange rate in effect at the time the transaction is entered to Borrower's Credit Line Account, including any special currency exchange charges.

**IDENTITY OF LENDER.** Lender is JPMorgan Chase Bank, N.A., a national banking association organized and existing under the laws of the United States of America, with its main offices located in Columbus, Ohio.

**Check Safekeeping.** Lender will retain your cancelled Credit Line Checks, and will not return them with your Credit Line Account statement. You agree that your cancelled Credit Line Checks will not be returned in your statement and that the original cancelled Credit Line Checks may be destroyed after a reasonable period of time as determined by Lender. You agree that by maintaining the original Credit Line Check or a copy thereof on your behalf, Lender has otherwise made the Credit Line Check available to you in a reasonable manner. You may request a copy of any cancelled Credit Line Check. If for any reason Lender cannot return a copy of your Credit Line Check or satisfy your needs through other means, you agree that Lender will not be liable for more than the face amount of the Credit Line Check.

**Information Sharing.** Our privacy policy, which has been provided to you describes our information sharing practices and gives directions on how to opt out, or direct us to limit the sharing of Personal Information (as defined in the privacy policy) about you with other companies or organizations. You hereby agree that, if you choose not to exercise the opt outs described in the privacy policy, you will be deemed to have authorized us to share any Personal Information about you (including information related to any of the products or services you may have with any JPMorgan Chase & Co. affiliate) with other companies or other organizations.

**Supplement to Charges to your Credit Line.** If you do not pay the fees and charges for which you are obligated or that we may charge under the terms of this Agreement at the time you are required to pay them, we have the right, but not the obligation, to charge your Credit Line for those past due fees and charges to the extent permitted by the law governing this transaction. Any amount so charged to your Credit Line will be a credit advance, bear interest at the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE until paid, and will decrease the funds available, if any, under the Credit Line. This paragraph supplements and amends but does not replace the Charges to your Credit Line paragraph.

**Stop Payments.** You may ask us to "stop payment" on a credit line check. If you do, you must tell us the name of the payee, the amount, date and number of the credit line check and who signed it. We are not bound by a stop payment order unless we have a reasonable opportunity to act on it and will not be liable for failing to stop payment if we used ordinary care. You agree to indemnify us and will pay all costs and expenses we incur (including reasonable attorney fees) as a result of honoring your stop payment order. This indemnity will survive any termination of this Agreement. You agree to pay the fee indicated in the Conditions Under Which Other Charges May Be Imposed section of this document for each request to "stop payment" on a credit line check.

**Additional Restriction on Access Devices.** You may not use your credit line checks, your credit card, or any other credit access device made available to make payments on your Credit Line Account.

**Governing Law.** This agreement will be governed by and interpreted in accordance with federal law and the laws of the State of Ohio, except for matters related to interest and the exportation of interest, which matters will be governed by and interpreted in accordance with federal law (including, but not limited to, statutes, regulations, interpretations, and opinions) and laws of the State of Ohio. However, if there ever is a question about whether any provision of the agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction which is evidenced by this and other related documents has been approved, made and funded, and all necessary documents have been accepted by Lender in the State of Ohio.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Interpretation.** You agree that this Agreement, together with the Mortgage, is the best evidence of your agreements with us. If we go to court for any reason, we can use a copy, filmed or electronic, of any periodic statement, this Agreement, the Mortgage or any other document to prove what you owe us or that a transaction has taken place. The copy, microfilm, microfiche, or optical image will have the same validity as the original. You agree that, except to the extent you can show there is a billing error, your most current periodic statement is the best evidence of your obligation to pay.

**Severability.** If a court finds that any provision of this Agreement is not valid or should not be enforced, that fact by itself will not mean that the rest of this Agreement will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Agreement even if a provision of this Agreement may be found to be invalid or unenforceable.

**Acknowledgment.** You understand and agree to the terms and conditions in this Agreement. By signing this Agreement, you acknowledge that you have read this Agreement. You also acknowledge receipt of a completed copy of this Agreement, including the Fair Credit Billing Notice and the early home equity line of credit application disclosure, in addition to the handbook entitled "When Your Home Is On the Line: What You Should Know About Home Equity Lines of Credit," given with the application.

HOME EQUITY LINE OF CREDIT AGREEMENT AND DISCLOSURE  
STATEMENT  
(Continued)

Loan No: [REDACTED]

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BORROWER:

x Jeffrey W. Davis  
JEFFREY W. DAVIS, Individually

Laura K. Davis  
LAURA K. DAVIS, Individually

Effective Disbursement Date: The first business day after February 13, 2007.



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4764917+1  
DAVIS, JEFFREY  
DEED OF TRUST / MORTGAGE

2007 MAR -9 AM 8:34

68  
MARY L. MORRIS  
GREENE CO. RECORDER  
XENIA, OHIO

**WHEN RECORDED MAIL TO:**

JPMorgan Chase Bank, N.A.  
Retail Loan Servicing KY2-1606  
P.O. Box 11606  
Lexington, KY 40576-1606

FOR RECORDER'S USE ONLY

**OPEN - END MORTGAGE**

**MAXIMUM LIEN:** The Maximum Amount of Loan Indebtedness secured by this Open-End Mortgage is \$220,000.00. The words "Maximum Amount of Loan Indebtedness" as used in this Mortgage mean the maximum unpaid balance of loan advances made under the Credit Agreement which may be outstanding at any one time. The Maximum Amount of Loan Indebtedness does not include any (A) interest, (B) taxes, (C) assessments, (D) insurance premiums, or (E) costs incurred for the protection of the Property. Grantor and Lender intend that, in addition to any other indebtedness or obligations secured hereby, this Mortgage shall secure indebtedness arising from loan advances made by Lender after this Mortgage is delivered to the recorder for record.

**THIS MORTGAGE** dated February 9, 2007, is made and executed between LAURA K DAVIS, JOINED HEREIN PRO FORMA BY JEFFREY W DAVIS, whose address is 2936 STONE MILL CT, DAYTON, OH 45434-6279 (referred to below as "Grantor") and JPMorgan Chase Bank, N.A., whose address is 1111 Polaris Parkway, Columbus, OH 43240 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor grants, mortgages and conveys to Lender, with mortgage covenants and upon the statutory condition, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in GREENE County, State of Ohio:

**SITUATE IN THE COUNTY OF GREENE, STATE OF OHIO AND IN THE CITY OF BEAVERCREEK AND BEING LOT NUMBERED 550 TARA ESTATES, SECTION 18, AS DESIGNATED, NUMBERED AND KNOWN ON THE RECORDED PLAT THEREOF, DULY RECORDED IN VOLUME 26, PAGES 2, 3, 4, AND 5, NKA PLAT CABINET 34, PAGE 102B-104A OF THE PLAT RECORDS OF GREENE COUNTY, OHIO.**  
B42-0006-0015-0-0077-00.

The Real Property or its address is commonly known as 2936 STONE MILL CT, DAYTON, OH 45434-6279. The Real Property tax identification number is B42-0006-0015-0-0077-00.

**REVOLVING LINE OF CREDIT.** Specifically, in addition to the amounts specified in the indebtedness definition, and without limitation, this Mortgage secures a revolving line of credit, which obligates Lender to make advances to Grantor so long as Grantor complies with all the terms of the Credit Agreement. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in either the indebtedness paragraph or this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in this Mortgage and any intermediate balance.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF EACH OF GRANTOR'S AGREEMENTS AND OBLIGATIONS UNDER THE CREDIT AGREEMENT, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or, (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to

VOL 2677 PG 704

EXHIBIT

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**MORTGAGE**  
(Continued)

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Loan No: [REDACTED]

Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Ohio law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for the Existing Indebtedness referred to in this Mortgage or those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and permissible fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the maximum amount of your credit line and the full unpaid principal balance of any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Compliance with Existing Indebtedness.** During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

**LENDER'S EXPENDITURES.** If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims (B) to provide any required insurance on the Property, or (C) to make repairs to the Property or to comply with any obligation to maintain Existing Indebtedness in good standing as required below, then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Credit Agreement from the date incurred or paid by Lender to the date of repayment by Grantor. All

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such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Credit Agreement and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Credit Agreement; or (C) be treated as a balloon payment which will be due and payable at the Credit Agreement's maturity. The Property also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY: DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Promises.** All promises, agreements, and statements Grantor has made in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature and shall remain in full force and effect until such time as Grantor's Indebtedness is paid in full.

**EXISTING INDEBTEDNESS.** The following provisions concerning Existing Indebtedness are a part of this Mortgage:

**Existing Lien.** The lien of this Mortgage securing the Indebtedness may be secondary and inferior to the lien securing payment of an existing obligation. The existing obligation has a current principal balance of approximately \$165906. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Credit Agreement; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Credit Agreement, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's

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sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the Indebtedness when due, terminates the credit line account, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**EVENTS OF DEFAULT.** Grantor will be in default under this Mortgage if any of the following happen:

(A) Grantor commits fraud or makes a material misrepresentation at any time in connection with the Credit Agreement. This can include, for example, a false statement about Grantor's income, assets, liabilities, or any other aspects of Grantor's financial condition.

(B) Grantor does not meet the repayment terms of the Credit Agreement.

(3) Grantor's action or inaction adversely affects the collateral or Lender's rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a senior lien on the dwelling without our permission, foreclosure by the holder of another lien, or the use of funds or the dwelling for prohibited purposes.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Credit Agreement or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender will give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

**Election of Remedies.** All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Mortgage, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

**Expenses.** To the extent not prohibited by applicable law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights, shall become a part of the loan payable on demand, and shall bear interest at the Note rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's expenses for bankruptcy proceedings (including efforts to modify or vacate the automatic stay or injunction) and appeals, to the extent permitted by applicable law.

**NOTICES.** Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any person may change his or her address for notices under this Mortgage by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender. Notwithstanding the foregoing, the address for notice for Lender is: JPMorgan Chase Bank, N.A., P.O. Box 901008, Fort Worth, TX 76101-2008.

**IDENTITY OF LENDER.** Lender is JPMorgan Chase Bank, N.A., a national banking association organized and existing under the laws of the United States of America, with its main offices located in Columbus, Ohio.

**NON-WAIVER.** A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision.

**SUPPLEMENT TO PERSONAL PROPERTY DEFINITION.** It is the intention of Lender only to take a security interest in and retain a lien on that personal property considered fixtures under the Uniform Commercial Code as adopted in the jurisdiction where this Mortgage is filed of record as same may be amended from time to time or such other statute of such jurisdiction that defines property affixed to real estate and no other personal property.

**WAIVER OF HOMESTEAD EXEMPTION.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Ohio as to all Indebtedness secured by this Mortgage.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract

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for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable federal or state law.

**JOINDER.** Any Grantor who is joined herein pro forma is signing solely for the purpose of binding whatever rights or interests may be granted to such Grantor at law or in equity and not for the purpose of claiming or asserting any ownership interest in the Property by virtue of signing this document.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** What is written in this Mortgage and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Mortgage. To be effective, any change or amendment to this Mortgage must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Governing Law.** This agreement will be governed by and interpreted in accordance with federal law and the laws of the State of Ohio except for matters related to: (1) interest and the exportation of interest, which will be governed by and interpreted in accordance with federal law (including, but not limited to, statutes, regulations, interpretations, and opinions) and the laws of the State of Ohio; and (2) the validity and enforcement of Lender's security interest in the Property, which will be governed by the laws of the State where the Property is located. However, if there ever is a question about whether any provision of the agreement is valid or enforceable, the provision that is questioned will be governed by whichever of the governing state or federal laws that would find the provision to be valid and enforceable. The loan transaction which is evidenced by this and other related documents has been approved, made and funded, and all necessary documents have been accepted by Lender in the State of Ohio.

**Joint and Several Liability.** All obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Mortgage.

**No Waiver by Lender.** Grantor understands Lender will not give up any of Lender's rights under this Mortgage unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Mortgage. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor.

**Severability.** If a court finds that any provision of this Mortgage is not valid or should not be enforced, that fact by itself will not mean that the rest of this Mortgage will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Mortgage even if a provision of this Mortgage may be found to be invalid or unenforceable.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage:

**Borrower.** The word "Borrower" means JEFFREY W DAVIS and LAURA K DAVIS, and all other persons and entities signing the Credit Agreement.

**Credit Agreement.** The words "Credit Agreement" mean the credit agreement dated February 9, 2007, in the original principal amount of \$220,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Credit Agreement is February 9, 2037.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described in the Existing Lien provision of this Mortgage.

**Grantor.** The word "Grantor" means JEFFREY W DAVIS and LAURA K DAVIS.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Credit Agreement or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of, and substitutions for the Credit Agreement or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. In addition, and without limitation, the term "Indebtedness" includes all amounts identified in the Revolving Line of Credit paragraph of this Mortgage. However, the term "Indebtedness" is subject to the limitations identified in the Maximum Lien section of this Mortgage.

**Lender.** The word "Lender" means JPMorgan Chase Bank, N.A., its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Credit Agreement.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

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**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND EACH GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X Jeffrey W. Davis  
JEFFREY W. DAVIS, Individually

Signed, acknowledged and delivered in the presence of:

X [Signature] Ryan A. Wenning  
Witness  
X [Signature] Anita L. Pujara  
Witness

X Laura K. Davis  
LAURA K. DAVIS, Individually

Signed, acknowledged and delivered in the presence of:

X [Signature] Ryan A. Wenning  
Witness  
X [Signature] Anita L. Pujara  
Witness

This instrument was prepared by ELKE DAVIDSON.

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF Ohio )  
 ) SS  
COUNTY OF Montgomery )

On this day before me, the undersigned Notary Public, personally appeared JEFFREY W. DAVIS, to me known to be the individual described in and who executed the Mortgage, and acknowledged before me that he or she signed the Mortgage as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 9 day of Feb., 2007.

By Deborah P. Hildreth Residing at 3075 Woodman Dr.

Notary Public in and for the State of OH My commission expires Nov. 27, 2010

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF Ohio )  
 ) SS  
COUNTY OF Montgomery )

On this day before me, the undersigned Notary Public, personally appeared LAURA K. DAVIS, to me known to be the individual described in and who executed the Mortgage, and acknowledged before me that he or she signed the Mortgage as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 9 day of Feb., 2007.

By Deborah P. Hildreth Residing at 3075 Woodman Dr.

Notary Public in and for the State of OH My commission expires Nov. 27, 2010



DEBORAH P. HILDRETH  
Notary Public, State of Ohio  
Montgomery County  
My Commission Expires Nov. 27, 2010

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